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5 IN THE UNITED STATES DISTRICT COURT  
6  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 ROBERTO I. ALVARO,

9 Plaintiff,

No. C 07-01685 JSW

10 v.

11 REY REY PRODUCE SFO INC., et al.

12 Defendants.

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**ORDER GRANTING MOTION TO  
DISMISS**

14 **INTRODUCTION**

15 Now before the Court is the motion to dismiss filed by Defendants Rey Rey Produce  
16 SFO (“RRSFO”), Rey & Rey Produce, Inc. (“R&R”), and Manuel Reynoso (“Reynoso”)  
17 (collectively, “Defendants”). Having carefully reviewed the parties’ papers, including their  
18 supplemental briefs, considered their arguments and the relevant legal authority, and good cause  
19 appearing, the Court HEREBY GRANTS Defendants’ motion.<sup>1</sup>

20 **FACTUAL BACKGROUND**

21 On March 27, 2007, Plaintiff Roberto I. Alvaro (“Alvaro”) filed suit pursuant to the  
22 Perishable Agricultural Commodities Act (“PACA”). (Compl. ¶ 7.) Defendants move to  
23 dismiss for lack of subject matter jurisdiction because of Alvaro’s failure to allege facts that  
24 establish standing under PACA.

25 This action relates to two transactions between Alvaro and Defendants for perishable  
26 produce. Alvaro regularly purchased perishable produce from suppliers in Mexico to be  
27 delivered directly to Defendants. (Compl. ¶ 11.) Alvaro invoiced the Defendants for the  
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<sup>1</sup> Pursuant to Local Rule 7-1(b), the Court finds the matter suitable for resolution without further oral argument.

1 produce at cost and received \$5,000 each week in commission from Defendants. (Compl. ¶ 11-  
2 12.) Through this arrangement, Alvaro alleges that he engaged in a joint venture with  
3 Defendants between 2004 and 2006 to import and sell perishable produce. (Supp. Br. 3.) On  
4 April 17, 2006 and August 15, 2006, Alvaro delivered perishable produce to Defendants.  
5 Alvaro alleges Defendants have not paid Alvaro the price of the produce or his commission for  
6 these transactions.

7 Through the PACA trust, a licensed seller of perishable commodities retains a claim in  
8 trust over the commodities sold, until the seller receives the full payment for those  
9 commodities. (Compl. ¶ 29.) Alvaro asserts that his PACA trust rights were secured through  
10 the language printed on invoice notices to Defendants and that he is, therefore, entitled to the  
11 benefits of the PACA trust. (*Id.*, ¶ 31.) In order to secure his rights in this manner, Alvaro must  
12 be a PACA licensee. Alvaro was individually licensed at the time he began selling produce to  
13 Defendants, but not at the time of the relevant transactions. (Supp. Br. 4.) In fact, Alvaro's  
14 personal PACA license had expired at the time of the perishable produce transactions in 2006.  
15 (Alvaro Decl. ¶¶ 17-20; Reeves Decl. ¶¶ 4-5 .)

## 16 ANALYSIS

### 17 A. Legal Standard

18 When a defendant moves to dismiss a complaint or claim for lack of subject matter  
19 jurisdiction, the plaintiff bears the burden of proving that the court has jurisdiction to decide the  
20 claim. *Thornhill Publ'n Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).  
21 Federal courts can only adjudicate cases which the Constitution or Congress authorize them to  
22 adjudicate: those cases which involve diversity of citizenship, or those cases which involve a  
23 federal question, or those cases which involve the United States as a party. *See e.g., Kokkonen*  
24 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A motion to dismiss for lack of  
25 subject matter jurisdiction under Rule 12(b)(1) may be "facial or factual." *Safe Air for*  
26 *Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Where an attack on jurisdiction is a  
27 "facial" attack on the allegations of the complaint, the factual allegations of the complaint are  
28 taken as true and the non-moving party is entitled to have those facts construed in the light most

1 favorable to him or her. *Fed’n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204,  
2 1207 (9th Cir. 1996). If the jurisdictional attack is “factual,” a defendant may rely on affidavits  
3 or other evidence properly before the Court, and the non-moving party is not entitled to any  
4 presumptions of truthfulness with respect to the allegations in the complaint. Rather, he or she  
5 must come forward with evidence establishing jurisdiction. *Thornhill*, 594 F.2d at 733.

6 **B. Defendants’ Motion to Dismiss the Complaint is Granted.**

7 “The several district courts of the United States are vested with jurisdiction specifically  
8 to entertain . . . actions by trust beneficiaries to enforce payment from the [PACA] trust.” 7  
9 U.S.C. § 499e(c)(5). PACA was created to alleviate the

10 burden on commerce in perishable agricultural commodities . . . caused by financing  
11 arrangements under which commission merchants, dealers, or brokers, who have not  
12 made payment for perishable agricultural commodities purchased, contracted to be  
13 purchased, or otherwise handled by them on behalf of another person. . . . This [Act]  
is intended to remedy such burden on commerce in perishable agricultural  
commodities and to protect the public interest.

14 7 U.S.C. § 499e(c)(1). To achieve this goal

15 [p]erishable agricultural commodities received by a commission merchant, dealer, or  
16 broker in all transactions, and all inventories of food or other products derived from  
perishable agricultural commodities, and any receivables or proceeds from the sale  
17 of such commodities or products, shall be held by such commission merchant, dealer,  
or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities  
18 or agents involved in the transaction until full payment of the sums owing in  
connection with such transactions has been received by such unpaid suppliers, sellers,  
or agents.

19 7 U.S.C. § 499e(c)(2).

20 Alvaro brings two claims under PACA. Both PACA claims rely on the benefits of the  
21 trust described above and require that the party invoking the protection of the trust be a PACA  
22 trust beneficiary. 7 U.S.C. § 499e(c)(5). There are two avenues for becoming and remaining a  
23 trust beneficiary. 7 U.S.C. § 499e(c)(3) & (4). First, an “unpaid supplier, seller, or agent” may  
24 establish benefits by giving “written notice of intent to preserve the benefits of the trust to the  
25 commission merchant, dealer, or broker.” 7 U.S.C. § 499e(c)(3). Second, “a licensee” may  
26 establish benefits by using “ordinary and usual billing or invoice statements to provide notice of  
27 the licensee’s intent to preserve the trust,” so long as the billing and invoice statements contain  
28 the language required by the statute. 7 U.S.C. § 499e(c)(4). Plaintiff alleges he utilized the

1 second of the two methods to secure his rights as a trust beneficiary. (Compl. ¶ 31.)

2 Defendants contend there is no jurisdiction in this Court because Alvaro was not a  
3 “licensee,” and therefore not a trust beneficiary, at the time of the transactions. Plaintiff admits  
4 that he had no individual license at the time of the transactions. However, he argues that he and  
5 Defendants were engaged in a joint venture and, therefore, Plaintiff was not required to  
6 maintain an individual license. Plaintiff asserts that because of this arrangement he is entitled to  
7 rely on Defendants’ license. In support of this argument, Plaintiff relies on the fact that PACA  
8 permits joint account transactions between two licensees and does not require a separate license  
9 for the joint account arrangement.<sup>2</sup>

10 The parties dispute the license requirements of a joint account arrangement. Pursuant to  
11 regulation, “[j]oint account arrangements between two or more licensees are not considered to  
12 result in separate firms and therefore, do not require separate licenses.” 7 C.F.R. § 46.3(c).  
13 Plaintiff argues that the statute only requires that the parties be individually licensed at the time  
14 they entered into the original joint account arrangement. In contrast, Defendants argue the  
15 statute only permits two separate licensees to form a joint account arrangement without  
16 obtaining a separate license for the firm created by the joint account arrangement, but that each  
17 party must hold a valid license.

18 When conducting statutory interpretation, as a general rule, a court first looks at the  
19 “plain language of the statute.” *Waste Action Project v. Dawn Mining Corp.*, 137 F.3d 1426,  
20 1428 (9th Cir. 1998). If the plain language of a statute is ambiguous, a court may consider the  
21 “legislative history, and as an aid in interpreting Congress’ intent, the interpretation given to it  
22 by its administering agency.” *Funbus Systems Inc. v. California Public Utilities Com.*, 801 F.2d  
23 1120, 1126 (9th Cir. 1986) (quoting *Brock v. Writers Guild of Am., West, Inc.*, 762 F.2d 1349,  
24 1353 (9th Cir. 1985)).

25 The language of 7 C.F.R. § 46.3(c) is plain and unambiguous. The regulation cannot be  
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27 <sup>2</sup> 7 C.F.R. § 46.2(s) defines a “joint account transaction” as “a produce  
28 transaction in commerce in which two or more persons participate under a limited joint  
venture arrangement whereby they agree to share in a prescribed manner the costs, profits, or  
losses resulting from such transaction.”

1 interpreted to allow one license shared by two members of the joint account arrangement  
2 because it refers to “licensees,” *i.e.* it uses the plural form of the noun. The regulation also  
3 notes that “separate licenses are required for each person.” 7 C.F.R. § 46.3(b). Therefore, the  
4 statute requires both members of the account arrangement to be individually licensed, and to be  
5 a licensee for the purpose of 7 C.F.R. § 46.3(c), Alvaro must have his own license. He did not.  
6 Therefore, he cannot show he is a PACA trust beneficiary.

### 7 CONCLUSION

8 For the foregoing reasons, the Court hereby GRANTS Defendants’ motion to dismiss  
9 the Complaint. Accordingly, Claim I and Claim II, which are Alvaro’s federal claims, are  
10 dismissed with prejudice, while Claims III, IV, V, VI, and VII, all state law claims, are  
11 dismissed without prejudice. *Scott v. Pasadena Unified School Dist.*, 306 F.3d 646, 664 (9th  
12 Cir. 2002) (holding federal district courts do not retain jurisdiction of supplemental state law  
13 claims when the claims creating a federal question are dismissed because of lack of subject  
14 matter jurisdiction). All pending motions are DENIED AS MOOT.

15 IT IS SO ORDERED.

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**United States District Court**  
For the Northern District of California

Dated: February 12, 2008

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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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